

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW
OF THE STATE OF MONTANA

In the matter of the) NOTICE OF AMENDMENT AND
amendment of ARM 17.8.504,) ADOPTION
17.8.505, and 17.8.744 and)
adoption of New Rules I)
through X pertaining to) (AIR QUALITY)
registration of certain air)
contaminant sources including)
non-metallic mineral)
processing plants)

TO: All Concerned Persons

1. On June 17, 2004, the Board of Environmental Review published MAR Notice No. 17-215 regarding a notice of public hearing on the proposed amendment and adoption of the above-stated rules at page 1359, 2004 Montana Administrative Register, issue number 12.

2. The Board has amended ARM 17.8.504, 17.8.505 and 17.8.744 and adopted new rules III (17.8.1603), IV (17.8.1604), and V (17.8.1605) exactly as proposed, and has adopted new rules I (17.8.1601), II (17.8.1602), VI (17.8.1606), VII (17.8.1607), VIII (17.8.1608), IX (17.8.1609) and X (17.8.1610) as proposed, but with the following changes:

NEW RULE I (17.8.1601) DEFINITIONS (1) For the purposes of this subchapter, the following definitions apply:

(1) through (6) remain as proposed.

(7) "Modified non-metallic mineral processing ~~plant~~ facility" means a ~~plant~~ facility at which equipment has been added or replaced or construction or changed conditions of operation have occurred after registration.

(8) "Non-metallic mineral processing ~~plant~~ facility" means any equipment, or combination thereof, including material transfer points, that is used to crush, grind, or screen any non-metallic mineral, as "non-metallic mineral" is defined in 40 CFR Part 60, Subpart 000.

(9) through (13) remain as proposed.

(14) "Registration eligible facility" means:

(a) a non-metallic mineral processing ~~plant~~ facility that operates only within the boundaries of areas for which a current mined land reclamation permit has been issued pursuant to Title 82, chapter 4, part 4, MCA,

(i) having the potential to emit less than:

(A) 50 tons per year (tpy) of particulate matter with an aerodynamic diameter less than 10 microns (PM-10) and 50 tpy of oxides of sulfur (SOx);

(B) and (C) remain as proposed.

(ii) that limits its production to ~~a level that equates to controlled emissions less than or equal to the emission levels in (a)(i)(A), (B), and (C)~~ 2,628,000 tons of material processed on a rolling 12-month cumulative total and has an engine capacity of 600 brake horsepower or less.

(15) through (17) remain as proposed.

NEW RULE II (17.8.1602) INCORPORATION BY REFERENCE (1)

For the purposes of this subchapter, the board hereby adopts and incorporates by reference:

(a) 40 CFR Part 60, Subpart 000, specifying standards of performance for non-metallic mineral processing ~~plants~~ facilities.

(a) through (4) remain as proposed.

NEW RULE VI (17.8.1606) NON-METALLIC MINERAL PROCESSING PLANTS FACILITY: REGISTRATION INFORMATION (1) The owner or operator of a non-metallic mineral processing ~~plant~~ facility shall provide the following additional equipment-specific information to the department at registration:

(a) through (2) remain as proposed.

NEW RULE VII (17.8.1607) NON-METALLIC MINERAL PROCESSING PLANTS FACILITY OPERATING REQUIREMENTS: FACILITY-WIDE (1) The following requirements apply to registered non-metallic mineral processing ~~plants~~ facilities:

(a) and (b) remain as proposed.

(c) The owner or operator shall treat all unpaved portions of haul roads, access roads, parking lots, and the general ~~plant~~ facility area with water and/or chemical dust suppressant, as necessary, to maintain compliance with ARM 17.8.308.

(d) remains as proposed.

~~(e) If the registered facility is used in conjunction with any other equipment owned or operated by the owner or operator, at the same operating site, production is limited to correspond with an emission level that does not exceed 100 tons of any regulated pollutant during any rolling 12-month time period.~~

~~(f)~~ (e) The owner or operator of equipment affected by new source performance standards (NSPS), as defined in 40 CFR 60, Subpart 000, shall comply with all applicable standards and limitations, and reporting, recordkeeping, testing, and notification requirements contained in 40 CFR 60, Subpart 000.

~~(g)~~ (f) Fugitive Emissions emissions from any crusher affected by NSPS, as defined in 40 CFR 60, Subpart 000, may not exhibit an opacity of 15% or greater averaged over six consecutive minutes.

~~(h)~~ (g) Fugitive Emissions emissions from any other NSPS affected equipment, such as screens and conveyor transfers, may not exhibit an opacity of 10% or greater averaged over six consecutive minutes.

~~(i)~~ (h) Emissions from any non-NSPS affected equipment may not exhibit an opacity of 20% or greater averaged over six consecutive minutes, as measured by EPA Reference Method 9.

(j) through (k)(ii) remain as proposed, but are renumbered (i) through (j)(ii).

(2) remains as proposed.

NEW RULE VIII (17.8.1608) NON-METALLIC MINERAL PROCESSING PLANTS FACILITY OPERATING REQUIREMENTS: ELECTRICAL GENERATORS

(1) The following requirements apply to all electrical generators used to provide electrical power at any registered facility:

(a) through (d) remain as proposed.

(e) The owner or operator shall monitor and record the following information:

(i) and (ii) remain as proposed.

(iii) if fuel oil is used, documentation that the fuel oil used is ASTM grade 1 or 2.

NEW RULE IX (17.8.1609) ADDITIONAL REQUIREMENTS FOR FACILITIES LOCATING IN OR WITHIN 10 KILOMETERS OF CERTAIN PM-10 NON-ATTAINMENT AREAS (1) through (3) remain as proposed.

(4) Total combined production of all equipment and processes at a non-metallic mineral processing ~~plant~~ facility is limited to correspond with an emission level that does not exceed 547 pounds per day of PM-10 emissions.

(5) A non-metallic mineral processing ~~plant~~ facility may be operated only from April 1 through September 30 of any given year.

(6) The owner or operator may not cause or authorize to be discharged into the atmosphere from any ~~other~~ non-metallic mineral processing equipment, such as crushers, screens, conveyors and material transfer points, any visible emissions that exhibit an opacity of 10% or greater averaged over six consecutive minutes.

(7) through (8)(f) remain as proposed.

NEW RULE X (17.8.1610) REPORT TO THE BOARD (1) The department shall report biennially to the board to update the board regarding current emission limitations and operating

requirements under these rules for non-metallic mineral processing ~~plants~~ facilities compared to current requirements for permitted facilities.

3. The following comments were received and appear with the Board's responses:

COMMENT NO. 1: The Board received comments from the Montana Contractors Association (MCA) supporting the adoption of a registration process for non-metallic mineral processing facilities. The MCA stated that House Bill 700 of the 2003 Legislative session authorized the Board to create a mechanism for the regulation of similar sources with similar environmental impacts using general permitting programs or a system of registration. The MCA stated that the proposed rule satisfies the legislative intent of House Bill 700 to streamline the process of regulating similar sources with similar environmental impacts.

RESPONSE: The Board agrees with the commentor and believes that the proposed registration process accomplishes the intended purpose of streamlining the regulatory process without reducing environmental protection.

COMMENT NO. 2: The Environmental Protection Agency (EPA) commented that the Department must provide adequate analyses showing the proposed rules will not jeopardize attainment and maintenance of the national ambient air quality standards (NAAQS) and the prevention of significant deterioration (PSD) increments. EPA stated that in order for the EPA to approve New Rules I through X into the State Implementation Plan (SIP), the Department must demonstrate that the proposed rules are consistent with Section 110(1) of the Federal Clean Air Act. Section 110 (1) of the Clean Air Act indicates that EPA cannot approve a SIP revision if the revision would interfere with the applicable requirement concerning attainment or maintenance of the NAAQS or reasonable further progress.

EPA commented that the Department would need to submit a technical document describing the modeling completed and explaining the assumptions used in the modeling (e.g. stack heights, the distance from property lines and elevated terrain, the emissions rates, background concentrations, and source configurations).

RESPONSE: The Board believes that the record is sufficiently clear that the adoption of a registration process for non-metallic mineral processing facilities has no significantly different impact on the environment than the current process of issuing permits for these types of sources.

The production limits, emission control requirements,

monitoring, recordkeeping and reporting requirements, and size restrictions placed on the facilities to be eligible for registration are substantially similar to those applicable under the current permitting system and ensure the protection of the NAAQS and PSD increments. Therefore, the Board does not believe it is necessary to conduct additional analyses to show compliance with the NAAQS and PSD increments.

COMMENT NO. 3: EPA also commented that the rules must establish short-term production limits on the non-metallic mineral processing plant, limits on the engine size or generator capacity, and short-term emissions limits to assure protection of the NAAQS and make enforceable any modeling assumptions used to demonstrate compliance with the NAAQS.

RESPONSE: The Board has revised the rules to include an annual production limit for non-metallic mineral processing facilities. The annual production limit will allow facilities to have some level of operational flexibility and will continue to ensure compliance with the NAAQS and the PSD increments. As stated above, the Board does not believe a modeling demonstration is necessary to demonstrate protection of the NAAQS. Therefore, additional requirements establishing limits based on the modeling assumptions also are unnecessary.

COMMENT NO. 4: EPA interprets the proposed rules to be "exclusionary and prohibitory rules" and, as such, subject to their guidance regarding exclusionary or prohibitory rules applicable to major sources. With this determination, there are several criteria that EPA states must be satisfied for these types of rules to be approved as revisions to a SIP. The requirements that must be met include technically accurate limitations, specific averaging times, methods of determining compliance, including appropriate monitoring, recordkeeping and reporting, identification of categories of sources that are covered by the rule, specification of when coverage is optional, and specification of enforcement consequences relevant to the rules.

RESPONSE: EPA's guidance applies to rules that exclude facilities from Title V or hazardous air pollutant requirements. The Board does not believe the referenced guidance is applicable to these rules because these rules do not exclude non-metallic mineral processing facilities from Title V permitting requirements or regulation of hazardous air pollutants. This rule limits the potential to emit to minor source levels. Facilities that have potential to emit greater than the thresholds in the rule would be subject to traditional permitting requirements.

COMMENT NO. 5: EPA commented that, in some instances, the proposed rules refer to a "non-metallic mineral processing plant" and in other instances to a "non-metallic mineral processing facility". EPA commented that this leads them to believe there is a difference between the two terms.

RESPONSE: The Board has revised the references to state "non-metallic mineral processing facilities" throughout the rules.

COMMENT NO. 6: EPA commented that they assumed the rules intended to cover electrical generators. EPA stated that the definition of "non-metallic mineral processing plant" should be revised to include electrical generators.

RESPONSE: In response to the comment, the Board established a limit on electrical generating capacity in the definition of "registration eligible facility". New Rule VIII already contains limitations on the operation of electrical generators.

COMMENT NO. 7: EPA commented that the new rules do not clearly state whether the 50 ton per year emissions limit applies to both SOx and PM-10 emissions individually or combined.

RESPONSE: The Board has made the suggested revision by specifying that the 50 ton per year limitation for registration eligibility applies to both PM-10 and SOx, individually.

COMMENT NO. 8: EPA commented that New Rule VII(e) would allow any type of facility meeting the emission limitations to operate in an existing permitted pit.

RESPONSE: The Board agrees. This was not the intention of the rules, and the Board has deleted New Rule VII(e).

COMMENT NO. 9: EPA commented that the rules meet the requirement of EPA's guidance that sources must notify the permitting authority of operation under the rules.

RESPONSE: The Board agrees that the rules are consistent with this provision, but does not agree that this is a requirement.

COMMENT NO. 10: EPA commented that the rules must contain specific technically accurate limits on the potential to emit and must include specific associated compliance monitoring.

RESPONSE: The Board does not believe it appropriate to limit the potential to emit in the rules because the potential to emit level defines the facilities that may use the registration rules. If a source changes its potential to emit

to an amount that exceeds this level, it has not violated a limit, but has merely changed from a registration eligible facility to a facility that requires a permit.

COMMENT NO. 11: EPA commented that the rules must specify the monitoring, recordkeeping and reporting methods used to determine compliance. The EPA commented that the rules include the monitoring, recordkeeping and reporting methods used to determine compliance, but also need to include compliance monitoring methods for the opacity requirements in New Rules VIII(1)(c) and IX(6) and (7). EPA also comments that the rules will need to include a compliance-monitoring requirement for any short-term limits established.

RESPONSE: The Board does not believe that EPA's policy is applicable in this case and believes that ongoing compliance monitoring for fugitive opacity is not appropriate for sources that, generally, are temporary in nature.

COMMENT NO. 12: EPA commented that averaging times for all limits must be practicably enforceable. EPA prefers daily limits but would allow averaging times of up to one month.

RESPONSE: The Board believes that the annual limits established in the rules are practically enforceable. The rules require the owner or operator to maintain records onsite sufficient to demonstrate compliance with the production rate and operating limitations contained in the rules.

COMMENT NO. 13: EPA commented that the rules must indicate the consequences for violation.

RESPONSE: The Board disagrees with this comment and believes that the air quality laws already contain sufficient enforcement provisions. The Board does not believe it is appropriate or necessary to repeat the enforcement provisions for each provision of the air quality rules.

COMMENT NO. 14: EPA commented that New Rule VII(1)(e) was unclear as to whether the requirements applied to all sources or just sources subject to the requirements of 40 CFR Part 60, Subpart 000.

RESPONSE: The Board agrees with the comment and has clarified the rule to specify that the requirements of New Rule VII(1)(e) apply only to sources subject to the requirements of 40 CFR Part 60, Subpart 000.

COMMENT NO. 15: EPA commented that the requirements in New Rule VII(1)(f) and (g) did not correctly represent the provisions of 40 CFR Part 60, Subpart 000.

RESPONSE: The Board does not agree with the comment, but does believe that the comment indicates that the rule is unclear in this instance. In response to the comment, the Board clarified that the opacity limits referred to in New Rule VII(1)(f) & (g) pertain only to fugitive emissions.

COMMENT NO. 16: EPA commented that the rules should require the use of EPA Method 9 to determine opacity of sources subject to New Rule VII(1)(h).

RESPONSE: The Board added language clarifying that EPA Method 9 is to be used to determine opacity of sources subject to New Rule VII(1)(h).

COMMENT NO. 17: EPA commented that New Rule VIII(1)(e)(iii) should be revised to refer to ASTM grades 1 and 2.

RESPONSE: The Board has revised New Rule VIII(1)(e)(iii) to refer to ASTM grades 1 and 2.

COMMENT NO. 18: EPA commented that the rules should include a definition of non-metallic mineral.

RESPONSE: The definition of "non-metallic mineral processing facility" refers to the federal definition of "non-metallic mineral" contained in 40 CFR Part 60, Subpart 000. The Board believes this definition is sufficient.

Reviewed by:

BOARD OF ENVIRONMENTAL REVIEW

_____	By: _____
DAVID RUSOFF	JOSEPH W. RUSSELL, M.P.H.
Rule Reviewer	Chairman

Certified to the Secretary of State, _____,
2004.